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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Kane County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 13-CF-1486
)	
ANGELO M. PARRA,)	Honorable
)	John A. Barsanti,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices Hutchinson and Birkett concurred in the judgment.

ORDER

¶ 1 *Held:* The violation of the motion *in limine* did not deprive defendant of his right to a fair trial, and therefore, the trial court did not abuse its discretion by denying defendant's motion for a mistrial after the victim testified to evidence that contravened a ruling *in limine*; affirmed.

¶ 2 Following a jury trial, defendant, Angelo M. Parra, was convicted of two counts of domestic battery (720 ILCS 5/12-3.2(a)(1), (a)(2) (West 2012)), which arose when he grabbed and struck the victim, Devan Dixon, on June 8, 2013. The trial court merged the convictions and sentenced defendant to two years' imprisonment. On appeal, defendant contends that the trial court committed reversible error when it refused to order a mistrial when the victim offered

testimony that violated the court's ruling on a motion *in limine*, precluding reference to an act of home invasion. We affirm.

¶ 3

I. BACKGROUND

¶ 4 Before trial, the State filed a motion *in limine* to admit other-crimes evidence pursuant to section 115-7.4 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/115-7.4 (West 2012)), of other acts of domestic battery by defendant. The State sought to admit domestic battery convictions against defendant from 2011 and 2012 involving other victims. The State also sought to admit evidence that defendant committed a separate act of domestic battery on the same victim around July 12, 2013, which occurred after the criminal conduct for which defendant was standing trial.¹ In that incident, defendant broke into Dixon's home and hit her in the leg with a hammer. The trial court allowed the State to present evidence concerning the July 12 battery, but it ordered the State to refrain from mentioning that the incident involved a home invasion.

¶ 5 The following evidence was presented at trial. Defendant moved into Dixon's residence located at 1322 South Glen Circle, Unit B, in Aurora about two to three weeks before the June 8, 2013, incident. On that date, Dixon and defendant argued when Dixon refused to give defendant \$20. Dixon was holding her daughter at the time. When she refused, defendant put out a lit cigarette on her chest. Dixon sustained scars from the burns and the cigarette also burned her

¹ While the issue here does not involve whether the other-crimes evidence was admissible, we note that the term "other-crimes evidence" encompasses misconduct or criminal acts that occurred either before or after the allegedly criminal conduct for which the defendant is standing trial. See *People v. Illgen*, 145 Ill. 2d 353, 365 (1991); *People v. Spyles*, 359 Ill. App. 3d 1108, 1112 (2005).

daughter. Dixon told defendant to leave, but he refused. Defendant's refusal prompted further argument. After leaving the room, defendant returned and choked Dixon with two hands from behind, and with a closed fist, he punched her on the back of her head and then he punched Dixon on the forehead.

¶ 6 While defendant was showering, Dixon left the apartment with her daughter and went to her mother's residence. There, Dixon took note of her injuries, including the scratches around her neck and the burns on her chest. Dixon's mother took photographs of her injuries, which showed burn marks and scratches on her chest and neck. The State showed the photographs to Dixon and she testified that they accurately depicted the marks from the choking, the scratches, and the burns as they appeared on the date when the photographs were taken.

¶ 7 The following colloquy then took place between the prosecutor and Dixon:

“Q. Now, all right. Before I go on, did you actually make—did you actually make—did you call the police at all yourself?”

A. No, not from this incident.

Q. Did you actually speak with the police that morning?

A. That morning, yeah, I did—no. Wait.

Q. All right.

A. I can't remember which day it was, but I talked to the police when they came and took pictures. No, it was when he did the home invasion that I talked to them.”

¶ 8 Defense counsel objected and, at a sidebar conference, defendant moved for a mistrial. Defense counsel argued that Dixon had violated the ruling *in limine* by testifying that she had talked to police after the home invasion, that the testimony had tainted the jury with prejudicial other-crimes evidence, and it was the State's responsibility to sufficiently prepare their witness.

The State argued that it had prepped the witness, and that the court's ruling allowed the State to explore some of the facts of the July 2013 incident. The State also argued that, based on Dixon's reaction, she had not made the statement intentionally, and the violation could be cured with an instruction rather than granting a mistrial. The court denied the motion for mistrial, noting it did not find the violation to be intentional. Defendant requested that the jury not be admonished to disregard the testimony. At the urging of defendant, the court did not instruct the jury to disregard the testimony; rather, the judge spoke directly to the witness before the jury returned, admonishing her not to mention the home invasion.

¶ 9 Dixon continued testifying about the events of July 12, 2013. Around 3:15 a.m., Dixon was asleep with her daughter in bed at her residence in Aurora when she heard banging coming from her downstairs front door and then footsteps running up the stairs. Dixon saw defendant, who demanded where she kept her money. Dixon screamed at defendant to stop and he grabbed a hammer from a drawer and struck Dixon twice on her thigh. Both Dixon and her daughter screamed and defendant ran out. After she was sure defendant was gone, Dixon and her daughter went to her mother's house and called the police. Dixon's injuries consisted of two red knots or deep bruises and swelling on her left thigh.

¶ 10 Aurora patrol officer Michael Oeser responded to the call sometime after 3:15 a.m. Dixon told him about the incident that night as well as the June 8 incident. He looked to see if there were any injuries from the June 8 incident and did notice a "faint circular mark on her upper chest." Dixon also showed him her left leg, which had been injured that night. Oeser described it as a circular raised bruise on her thigh.

¶ 11 The jury found defendant guilty of both counts of domestic battery, and the court entered judgment on the convictions. Defendant's posttrial motion to reconsider was denied. Thereafter,

the court merged the convictions and sentenced defendant to two years' imprisonment. Following the denial of defendant's motion to reconsider the sentence, defendant timely appeals.

¶ 12

II. ANALYSIS

¶ 13 Defendant contends that the trial court committed reversible error when it refused to order a mistrial when the victim offered testimony that violated the court's ruling on the motion *in limine*, precluding reference to an act of home invasion. The State responds that a mistrial was not warranted because defendant was not prejudiced by the testimony.

¶ 14 Generally, testimony pertaining to a defendant's unrelated crimes or acts of misconduct to prove the defendant's propensity to commit a crime is prejudicial. *People v. Phillips*, 383 Ill. App. 3d 521, 547 (2008). However, if evidence of other crimes or acts of misconduct are offered in contravention of the trial court's ruling on a motion *in limine*, such error may generally be cured by sustaining the defendant's objection and instructing the jury to disregard the statement. *People v. Hall*, 194 Ill. 2d 305, 342 (2000). The violation of a trial court's ruling on a motion *in limine* is grounds for a mistrial only when the violation effectively deprived the defendant of his right to a fair trial. *Id.* at 341-42; see also *People v. Bishop*, 218 Ill. 2d 232, 251 (2006) ("a mistrial should be granted where an error of such gravity has occurred that it has infected the fundamental fairness of the trial, such that continuation of the proceeding would defeat the ends of justice"). Ultimately, it is within the trial court's sound discretion to grant or deny a party's request for a mistrial, and therefore, we will uphold the trial court's decision to deny the defendant's motion for a mistrial absent an abuse of discretion. *Id.* at 251; *People v. Nolan*, 332 Ill. App. 3d 215, 229 (2002). An abuse of discretion exists only when the trial court's ruling is "arbitrary, fanciful, *** or where no reasonable man would take the view adopted by the trial

court.’ ” *People v. Melchor*, 376 Ill. App. 3d 444, 451 (2007) (quoting *People v. Santos*, 211 Ill. 2d 395, 401 (2004)).

¶ 15 The State concedes that Dixon’s statement regarding the act of home invasion violated the ruling on the motion *in limine*. However, we conclude that the violation of the motion *in limine* did not deprive defendant of his right to a fair trial. Here, there was a single, isolated violation of the ruling *in limine*. The State made no mention of home invasion in their question to the witness; the violation was made in her answer as she attempted to establish a timeline of when she spoke to police. The trial court found that neither the State nor the witness intentionally violated the ruling *in limine*. The trial court made special mention that, if the violation had appeared to be intentional, the court would have granted the motion for a mistrial.

¶ 16 After ruling against the motion for mistrial, the trial court remedied the violation. The court sustained defense counsel’s objection and it specifically asked if defendant would want the jury to be admonished. Defense counsel made the tactical decision to decline to have the jury admonished. See *People v. Monroe*, 366 Ill. App. 3d 1080, 1092 (2006) (prejudice cured when court sustained objection to improper testimony, gave instruction to jury to disregard improper testimony, or offered to give jury instruction but counsel ultimately requested it not be given). After admonishing the witness, the court continued the trial by informing the jury that the objection was sustained and directed the State to ask another question. At the end of trial, the court instructed the jury to disregard evidence to which objections were sustained. Moreover, as the State points out, though an error occurred, the brief mention of the unspecific act of home invasion against the sufficient evidence of the instant charge of defendant choking the victim was cured by the subsequent ruling and instruction. See *Phillips*, 383 Ill. App. 3d at 547-48. These

remediation measures sufficiently ensured that defendant received a fair trial. Thus, the trial court did not abuse its discretion in denying defendant's motion for mistrial.

¶ 17 Defendant also complains that Dixon once again violated the motion *in limine* when she described being awakened at 3:15 a.m. by the “banging from downstairs, which is my door, and I heard running up my stairs, footsteps coming up my stairs.” Defendant argues that this testimony was highly prejudicial because it came after the mention of home invasion and can only be construed as defendant committing a home invasion. The State argues that defendant forfeited this claim of error by failing to object to the testimony and by failing to include it in his posttrial motion. See *People v. Ferral*, 397 Ill. App. 3d 697, 715-16 (2009). Defendant disagrees, arguing that he did preserve the issue through defense counsel's objection to the evidence of July 12, 2013, both when the State made its initial motion *in limine* and again in his posttrial motion.

¶ 18 Forfeiture aside, we conclude that the testimony did not violate the court's ruling on the motion *in limine*. In his appellate brief, defendant maintains that Dixon revealed his involvement in a home invasion when she testified that she was awakened at 3:15 a.m. by someone “banging down her downstairs door and running up the stairs.” However, defendant not only mischaracterized Dixon's testimony, as the State points out, but he misconstrued it as well. Dixon's observations did not describe a home invasion or, for that matter, any bad act; rather, she was explaining that the banging downstairs and the footsteps on the stairs woke her from her sleep early in the morning.

¶ 19 **III. CONCLUSION**

¶ 20 For the preceding reasons, we affirm the judgment of the circuit court of Lake County. As part of our judgment, we grant the State's request that defendant be assessed \$50 as costs for

this appeal. 55 ILCS 5/4-2002(a) (West 2012); see also *People v. Nicholls*, 71 Ill. 2d 166, 179 (1978).

¶ 21 Affirmed.